

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7863 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

LR KURUNDALE

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

MR VM PANCHOLI, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/03/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The respondents have chosen not to file reply to the special civil application. this is what consistently they are following despite of the fact that the State

Government is spending an handsome amount in defending the cases in the court. Be that as it may. The court cannot wait for their reply indefinitely. The matters are to be decided whether reply is filed or not looking to the fact that it is a very old matter.

3. The respondent No.2 on 24th November, 1982 declined to grant leave of 120 days for the period from 15-10-1981 to 12-2-1982 as prayed by the petitioner. On 5-1-1984, the respondent No.2 has imposed the penalty of censure on the basis of the chargesheet dated 19-11-1982 on the petitioner for his absence from duty and for noncompliance of the order of transfer. The order dated 24-11-1982 came to be cancelled by the respondent No.2 under its order dated 27/28-8-1984. Under the letter dated 12th December, 1983, the respondent NO.2 informed to the petitioner that according to revised Leave Rules, his leave for more than 120 days cannot be granted. The respondent No.2 vide its letter dated 27th August, 1984, granted 64 days Earned Leave from 15-10-1981 to 17-12-1981 to the petitioner and forwarded the application to the Government for grant of extraordinary leave from 18-12-1881 to 26-10-1983. The respondent No.1 under its order dated 30-10-1984 rejected the proposals made by the Registrar for grant of extraordinary leave to the petitioner for the period aforesaid. It is further directed to the respondent No.2 to treat this period as break in service of the petitioner. On 1-2-1986, the Registrar recommended to the respondent No.1 to reconsider the matter. On 12-2-1986, the respondent No.1 refused to reconsider the matter and the said decision was conveyed to the petitioner through the Assistant District Registrar concerned. On 27-7-1987, the respondent No.1 has modified its earlier order dated 30-10-1984 and ordered that the period from 18-12-1981 to 26-10-1983 may not be counted towards the qualifying services for pension. The petitioner filed an appeal before the Civil Services Tribunal but on 12-7-1988, the same has been withdrawn. Hence, this special civil application before this court.

4. In the facts of this case, I find that the Registrar was the sanctioning authority for leave to the petitioner and under its order dated 27th August, 1984, the Registrar granted 64 days Earned Leave to the petitioner from 15-10-1981 to 17-12-1981. So far as the remaining period is concerned, for which extraordinary leave has to be granted extending 120 days, the matter has been referred to the State Government. The State Government has decided on 30-10-1984 to treat this period as break in service. This order appears to have been

passed without giving any notice and opportunity of hearing to the petitioner as well as the reasons also appear to have not been stated. Again the matter has been sent for reconsideration but the respondent No.1 has declined to reconsider the matter. The order dated 30-10-1984 is modified and total period of absence of the petitioner from 18-12-1981 to 26-10-1983 was ordered to be not counted for qualifying service for pension. This order adversely affects the right of pension and that also appears to have been passed without giving any notice and an opportunity of hearing to the petitioner. The reasons have also not been stated by the State. the petitioner for his long absence has already been punished with the penalty of censure. The petitioner has given out reasons for his absence. The respondent No.1 should have considered this matter on merits and then it should have passed the appropriate order. It is a case where without applying its mind, the respondent No.1 passed a cryptic order.

5. In the result, this special civil application succeeds and the same is allowed and the orders of the respondent No.1 dated 30-10-1984, 12-2-1986 and 27-7-1987 are quashed and set aside. The petitioner is directed to file an affidavit giving out the reasons and grounds for his absence for the period in question and after considering the affidavit and where petitioner prays for the opportunity of personal hearing after giving him an opportunity of personal hearing, the matter may be decided afresh. Rule is made absolute in the aforesaid terms with no order as to costs. Liberty is granted to the petitioner for revival of this special civil application in case of difficulty.

zgs/-